

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE ARBITRATION OF: QWEST CORPORATION, Petitioning Party, V. AT&T COMMUNICATIONS OF THE MIDWEST, INC., AND TCG OMAHA, Responding Parties.	DOCKET NO. WRU-04-12 (ARB-04-1)
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ORDER GRANTING WAIVER AND ESTABLISHING PROCEDURAL SCHEDULE

(Issued March 18, 2004)

On February 9, 2004, Qwest Corporation (Qwest) filed with the Utilities Board (Board) a petition for arbitration of an interconnection agreement, pursuant to Section 252(b) of the Telecommunications Act of 1996, 47 U.S.C. § 151 *et seq.* (the Act), and 199 IAC 38.7(3). Qwest requested arbitration of the terms, conditions, and prices for interconnection and related arrangements with AT&T Communications of the Midwest, Inc. (AT&T), and TCG Omaha (TCG). In addition to its request for arbitration, Qwest requested a hearing on the issues. The petition was identified as Docket No. ARB-04-1.

Once a petition for arbitration has been filed, 199 IAC 38.7(3) sets forth specific timeframes to ensure that the decision of the Board is issued within the nine-month deadline allowed in the Telecommunications Act of 1996. The Board

conducted a prehearing conference on March 4, 2004, for the purpose, among other items, of setting an arbitration hearing date and a procedural schedule.

Pursuant to 199 IAC 38.7(3)"h," the Board is required to commence a hearing no later than 60 days following the receipt of the petition for arbitration. On March 17, 2004, Qwest, AT&T, and TCG filed a joint motion for waiver of the 60-day requirement and requested that, if a hearing is necessary, it be held on April 16, 2004. The parties indicated that they are involved in negotiations and the additional time may allow them to resolve many if not all of the remaining disputed issues. The request for waiver was identified as Docket No. WRU-04-12.

Rule 199 IAC 1.3 provides that the Board may grant a waiver if it finds based upon clear and convincing evidence that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver request described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

The Board finds that holding a hearing within 60 days of the date the petition for arbitration was filed would be an undue hardship on the parties and the Board since it would limit the ability of the parties to complete negotiations and could require a hearing on issues that could otherwise be resolved by negotiation. The waiver will not prejudice the substantial legal rights of any person since all parties have supported the waiver. The provisions waived are not specifically mandated by

statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board will grant the waiver of paragraph 38.7(3)"h" and schedule a hearing for April 16, 2004, as requested by the parties.

At the prehearing conference held on March 4, 2004, the parties agreed to a procedural schedule. The Board will include that procedural schedule in this order. The parties also agreed that they would inform the Board if a hearing is not necessary.

IT IS THEREFORE ORDERED:

1. The joint motion for waiver of paragraph 199 IAC 38.7(3)"h" filed by Qwest Corporation, AT&T Communications of the Midwest, Inc., and TCG Omaha is granted.

2. The following procedural schedule is established:

a. Prepared direct testimony, with the underlying workpapers and exhibits, shall be filed on or before March 18, 2004. If a party references a data request in its prepared testimony, the data request shall be filed as an exhibit.

b. Rebuttal testimony shall be filed on or before April 5, 2004.

c. A joint issues matrix, including the names of witnesses to testify on each issue, shall be filed by parties on or before April 12, 2004.

d. A hearing shall be held beginning at 9 a.m. on April 16, 2004, for the purpose of receiving testimony and the cross-examination of all testimony. The hearing shall be held in the Iowa Utilities Board Hearing Room, 350 Maple Street, Des Moines, Iowa. The parties shall appear one-half hour prior to the

time of the hearing for the purpose of marking exhibits. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515) 281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

e. Simultaneous briefs shall be filed on or before April 30, 2004.

f. If no hearing is necessary, briefs shall be filed on or before April 19, 2004.

4. In the absence of objection, all underlying workpapers shall become a part of the evidentiary record of these proceedings at the time the related testimony and exhibits are entered into the record.

5. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination, which have not been previously filed, shall become a part of the evidentiary record of these proceedings. The party making reference to the data request shall file an original and six copies of the data request and response with the Board at the earliest possible time.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 18th day of March, 2004.